

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTELL BROWN-WRIGHT,

Defendant.

Case No. 14-cr-40085-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Martell Brown-Wright's *Pro Se* Motion (Doc. 38) for Reduction. The Court believes, however, that Defendant intends to invoke 28 U.S.C. § 2255 because the relief he seeks is only available through such a motion.

The Court is hesitant to construe this as a § 2255 motion without a clear indication that Mr. Brown-Wright intends to invoke that statute. "[T]he court cannot so recharacterize a pro se litigant's motion as the litigant's first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing." *Castro v. United States*, 540 U.S. 375, 377 (2003).

Therefore, the Court **WARNS** Defendant Brown-Wright that if he does not file a motion to withdraw his pending motion (Doc. 38) on or before **July 29, 2016**, the Court will construe it as a § 2255 motion and Mr. Brown-Wright will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255, ¶ 8. The Court also **CAUTIONS** the plaintiff that the time for filing a § 2255 motion based on a right asserted that was initially recognized by the

Supreme Court and made retroactively applicable to cases on collateral review is one year from the date of the decision. The Clerk of Court is **DIRECTED** to send the Defendant a copy of Administrative Order 176 along with a copy of this order.

IT IS SO ORDERED.

DATED: 6/28/2016

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE